

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

**APPELLANTS' ITEMS DESIGNATED FOR THE RECORD ON APPEAL
AND STATEMENT OF ISSUES ON APPEAL**

Appellants, Edward Zraick Jr., Nancy Zraick, Patricia DeLuca and Karen M. Rich (the “Appellants”), by and through their undersigned counsel, and pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure, hereby identify the following issues to be presented on appeal and designate the items to be included for the record on appeal to the United States District Court for the Southern District of New York from the *Order Affirming Application of the Trustee’s Inter-Account Method to the Determination of Transfers Between BLMIS Accounts* [Docket No. 8857] (the “Order”), entered on December 22, 2014, and related *Memorandum Decision Affirming Application of the Trustee’s Inter-Account Method to the Determination of Transfer Between BLMIS Accounts* [Docket No. 8680] (the “Decision”), entered on December 8, 2014 (Hon. Stuart M. Bernstein) (the “Bankruptcy Court”), in the above-captioned proceeding.

Designation of Items for the Record on Appeal

<u>Item</u>	<u>Date</u>	<u>Docket No.</u>	<u>Document Title</u>
1.	10/16/2009	525	Memorandum of Law in Support of Trustee's Motion For an Order Upholding Trustee's Determination Denying "Customer" Claims For Amounts Listed on Last Customer Statement, Affirming Trustee's Determination of Net Equity, and Expunging Those Objections With Respect To The Determinations Relating To Net Equity
2.	3/1/2010	1999	Memorandum Decision Granting Trustees Motion For An Order (1) Upholding Trustees Determination Denying Customer Claims For Amounts Listed On Last Customer Statement; (2) Affirming Trustees Determination Of Net Equity; And (3) Expunging Objections To Determinations Relating To Net Equity
3.	6/2/2010	2355	Objection to Trustee's Determination of Claim
4.	6/18/2010	2455	Motion for Admission to Practice <i>Pro Hac Vice</i> of Thomas L. Long
5.	3/27/2014	6049	Scheduling Order Signed On 3/27/2014. Re: Inter-Account Transfer Motion with hearing to be held on 6/19/2014 at 10:00 AM at Courtroom 723 (SMB)
6.	3/31/2014	6079	Memorandum Of Law Of The Securities Investor Protection Corporation In Support Of The Trustee's Determinations Regarding Inter-Account Transfers filed by Kevin H. Bell on behalf of Securities Investor Protection Corporation. (Attachments: # 1 Certificate of Service)
7.	3/31/2014	6084	Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts
8.	3/31/2014	6085	Memorandum of Law in Support of Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts
9.	3/31/2014	6086	Declaration of Bik Cheema in Support of the Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts (related document(s) 6085, 6084) filed by David J. Sheehan on behalf of Irving H. Picard. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2)
10.	4/1/2014	6092	Affidavit of Service regarding Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts (related document(s) 6085, 6084, 6086) filed by David J. Sheehan on behalf of Irving H. Picard.

<u>Item</u>	<u>Date</u>	<u>Docket No.</u>	<u>Document Title</u>
11.	4/9/2014	6170	Affidavit of Service Affidavit of Mailing for March 31, 2014 (related document(s)6085, 6084, 6086) filed by John J Collins Jr. on behalf of AlixPartners LLP.
12.	5/7/2014	6548	Letter to Hon. Stuart M. Bernstein filed by Helen Chaitman on behalf of Marsha Peshkin.
13.	5/8/2014	6565	Notice of Hearing filed by Helen Chaitman on behalf of Marsha Peshkin.
14.	5/8/2014	6589	Letter to Honorable Stuart M. Bernstein regarding request for adjournment on Inter-Account Transfer Motion (related document(s)6548) filed by David J. Sheehan on behalf of Irving H. Picard.
15.	5/13/2014	6640	Opposition to the Trustee's Inter-Account Transfer Motion filed by Joel L. Herz on behalf of Samdia Family, LP. (Attachments: # 1 Exhibit A)
16.	5/15/2014	6670	Memorandum of Law in Opposition to Inter-Account Transfer Motion (related document(s)6084) filed by Paula J. Warmuth on behalf of Michael Most. (Attachments: # 1 Exhibit A - Customer Claim # 2 Exhibit B - Objection to Trustee's Determination of Claim # 3 Exhibit C - Email from Baker & Hostetler)
17.	5/16/2014	6687	Objection to Motion /Objection of Edward A. Zraick, Jr., Nancy Zraick, Patricia DeLuca and Karen Rich to Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts (Claim Nos. 002107 and 002108) (related document(s)6084) filed by Robert A. Rich on behalf of Patricia DeLuca, Karen M. Rich, Nancy Zraick, Edward A. Zraick, Jr.
18.	5/16/2014	6688	Order Signed On 5/15/2014. Re: Granting The Diana Melton Trust Dated 12/05/05 Unopposed Motion For Brief Two (2) Day Extension Of Time To File Its Opposition To Trustees Inter-Account Transfer Motion
19.	5/16/2014	6702	Statement Objection And Joinder Of Brian Ross To Arguments Presented In Connection With The Trustees Motion Affirming Application Of Net Investment Method To Determination Of Customer Transfers Between Blmis Accounts (related document(s)6084) filed by Gerard Sylvester Catalanello on behalf of Brian Ross.

<u>Item</u>	<u>Date</u>	<u>Docket No.</u>	<u>Document Title</u>
20.	5/16/2014	6706	Statement /Joinder of Interested Party, The Mittlemann Family Foundation, in Samdia Family, LP's Memorandum of Law In Opposition to the Trustee's Inter-Account Transfer Motion and All Other Objections to the Trustee's Inter-Account Transfer Motion filed by Susan F. Balaschak on behalf of The Mittlemann Family Foundation.
21.	5/16/2014	6707	Objection to Motion Objection of Lawrence Elins to Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between Accounts (related document(s)6084) filed by Matthew J. Gold on behalf of Lawrence Elins. with hearing to be held on 6/19/2014 at 10:00 AM at Courtroom 723 (SMB) (Attachments: # 1 Pleading Certificate of Service)
22.	5/16/2014	6708	Opposition Brief Customers' Memorandum of Law in Opposition to the Trustee's Method for Valuing Inter-Account Transfers (related document(s)6084) filed by Helen Chaitman on behalf of Marsha Peshkin. (Attachments: # 1 Exhibit A)
23.	5/16/2014	6712	Declaration in Opposition to the Trustee's Motion to Affirm Application of the Net Investment Method to the Determination of Customer Transfers between BLMIS Accounts (related document(s)6084) filed by Helen Chaitman on behalf of Athena Arvan. (Attachments: # 1 Exhibit A # 2 Exhibit B)
24.	5/16/2014	6713	Opposition Brief Marion Apple's Memorandum of Law in Opposition to The Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts (related document(s)6084) filed by Lawrence M. Shapiro on behalf of Marion E Apple.
25.	5/16/2014	6714	Opposition (related document(s)6084) filed by Jeffrey L. Bernfeld on behalf of Alan J. Winters Profit Sharing Trust, Alan Winters & Janet Winters Family Limited Partnership, Manfred W. Franitza, Franitza Family Limited Partnership "The Shores", Harvey L. Werner Revocable Trust, Harvey werner trust, Jeffrey R Werner Trust, Jeffrey R. Werner 11-1-98 Trust, Frederic Z Konigsberg, Susan M. Konigsberg, Manfred Franitza (IRA), Manfred Franitza Revocable Trust, Marital Trust No. 1 Created under the Harvey Werner revocable Trust U/A/D 8/31/82, Edith A. Schur, Werner Foundation.

<u>Item</u>	<u>Date</u>	<u>Docket No.</u>	<u>Document Title</u>
26.	5/16/2014	6715	Declaration in Opposition to the Trustee's Motion to Affirm Application of the Net Investment Method to the Determination of Customer Transfers between BLMIS Accounts (related document(s)6084) filed by Helen Chaitman on behalf of Marsha Peshkin. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D)
27.	5/16/2014	6716	Declaration of Marion E. Apple (in opposition to Trustee's motion affirming application of net investment method to determination of customer transfers between BLMIS accounts) (related document(s)6084) filed by Lawrence M. Shapiro on behalf of Marion E Apple.
28.	5/16/2014	6717	Declaration in Opposition to the Trustee's Motion to Affirm Application of the Net Investment Method to the Determination of Customer Transfers between BLMIS Accounts (related document(s)6084) filed by Helen Chaitman on behalf of Barbara K. Gaba. (Attachments: # 1 Exhibit A # 2 Exhibit B)
29.	5/16/2014	6719	Declaration in Opposition to the Trustee's Motion to Affirm Application of the Net Investment Method to the Determination of Customer Transfers between BLMIS Accounts (related document(s)6084) filed by Helen Chaitman on behalf of Aaron Blecker. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D)
30.	5/16/2014	6724	Declaration in Opposition to the Trustee's Motion to Affirm Application of the Net Investment Method to the Determination of Customer Transfers between BLMIS Accounts (related document(s)6084) filed by Helen Chaitman on behalf of Ellen Mishkin. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F)
31.	5/16/2014	6726	Declaration in Opposition to the Trustee's Motion to Affirm Application of the Net Investment Method to the Determination of Customer Transfers between BLMIS Accounts (related document(s)6084) filed by Helen Chaitman on behalf of Barbara Kotlikoff Harman. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E)
32.	5/16/2014	6727	Opposition to Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts (related document(s)6084) filed by Bernard J. Garbutt III on behalf of Kostin Company.

<u>Item</u>	<u>Date</u>	<u>Docket No.</u>	<u>Document Title</u>
33.	5/16/2014	6732	Claimants' Omnibus Opposition to the Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts
34.	05/16/2014	6734	Motion to Join <i>Claimants' Omnibus Opposition To The Trustee's Motion Affirming Application Of Net Investment Method To Determination Of Customer Transfers Between BLMIS Accounts</i> filed by Gabrielle J. Pretto on behalf of Rose Less.
35.	05/16/2014	6753	Motion to Join <i>with Revised Addendum</i> filed by Gabrielle J. Pretto on behalf of Rose Less.
36.	5/20/2014	6760	Declaration Corrects ECF errors in Doc No. 6719 - Declaration in Opposition to the Trustee's Motion to Affirm Application of the Net Investment Method to the Determination of Customer Transfers between BLMIS Accounts (related document(s)6084) filed by Helen Chaitman on behalf of Aaron Blecker. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Chaitman, Helen)
37.	5/20/2014	6761	Declaration Corrects corrupt files in Doc Nos. 6719 & 6760 - Declaration in Opposition to the Trustee's Motion to Affirm Application of the Net Investment Method to the Determination of Customer Transfers between BLMIS Accounts (related document(s)6084) filed by Helen Chaitman on behalf of Aaron Blecker. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D)
38.	5/21/2014	6788	Order Signed On 5/21/2014 Re: Denying Motion Of The Irrevocable Charitable Remainder Trust Of Yale Fishman And The Glenn Akiva Fishman Charitable Remainder Unitrust For (I) A Hearing To Determine Allowance Of Claims And (II) Entry Of An Order Allowing The Trust Claimants Claims And Granting Related Relief(Related Doc # 5645)
39.	6/3/2014	6896	Transcript regarding Hearing Held on 5/20/2014 10:16AM RE: The Fishman Trusts' Motion for a Hearing (I) to Determine Allowance of Claims and (II) Entry of an Order Allowing the Trust Claimants' Claims and Granting Related Relief.
40.	6/3/2014	6900	Opposition Brief of Elliot G. Sagor (related document(s)6084) filed by Elliot G. Sagor on behalf of Elliot G. Sagor.

<u>Item</u>	<u>Date</u>	<u>Docket No.</u>	<u>Document Title</u>
41.	6/3/2014	6901	Declaration of ELLIOT G. SAGOR, ESQ. (related document(s)6084) filed by Elliot G. Sagor on behalf of Elliot G. Sagor. (Attachments: # 1 Appendix Document Appendix to Memorandum of Law # 2 Certificate of Service)
42.	6/6/2014	6926	Reply Memorandum of Law in Support of Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts
43.	6/6/2014	6927	Reply Memorandum of Law of the Securities Investor Protection Corporation in Support of the Trustee's Determination Regarding Inter-Account Transfers
44.	6/6/2014	6928	Declaration of Kevin H. Bell in Support of the Reply Memorandum of Law of the Securities Investor Protection Corporation in Support of the Trustee's Determinations Regarding Inter-Account Transfers (related document(s)6084) filed by Kevin H. Bell on behalf of Securities Investor Protection Corporation. (Attachments: # 1 Exhibit A # 2 Exhibit B)
45.	5/21/2014	6972	The Diana Melton Trust, Dated 12/05/05, Opposition to the Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts
46.	6/18/2014	7020	Notice of Agenda for Matters Scheduled for Hearing on June 19, 2014 at 10:00 A.M. (related document(s)6084) filed by David J. Sheehan on behalf of Irving H. Picard.
47.	7/3/2014	7249	Transcript regarding Hearing Held on 6/19/2014 10:40AM RE: Inter- Account Transfers -- Trustee's Motion Affirming Application of Net Investment Method to Inter- Account Transfers.
48.	12/8/2014	8680	Memorandum Decision Affirming Application of the Trustees Inter-Account Method to the Determination of Transfers Between BLMIS Accounts.
49.	12/12/2014	8741	Notice of Settlement of an Order Affirming Application of the Trustee's Inter-Account Method to the Determination of Transfers Between BLMIS Accounts (related document(s)8680) filed by David J. Sheehan on behalf of Irving H. Picard. with hearing to be held on 12/19/2014 at 10:00 AM at Courtroom 723 (SMB) Objections due by 12/17/2014, (Attachments: # 1 Proposed Order # 2 Exhibit 1 to Proposed Order # 3 Exhibit 2 to Proposed Order)

<u>Item</u>	<u>Date</u>	<u>Docket No.</u>	<u>Document Title</u>
50.	12/15/2014	8760	Affidavit of Service regarding Notice of Settlement of an Order Affirming Application of the Trustee's Inter-Account Method to the Determination of Transfers Between BLMIS Accounts (related document(s)8741) Filed by David J. Sheehan on behalf of Irving H. Picard.
51.	12/19/2014	8843	Notice of Appeal of Memorandum Decision Affirming Application Of The Trustees Inter-Account Method To The Determination Of Transfers Between BLMIS Accounts.
52.	12/22/2014	8857	Order Signed On 12/19/2014 Re: Affirming Application Of The Trustees Inter-Account Method To The Determination Of Transfers Between BLMIS Accounts (Related Doc # 6084)
53.	1/2/2015	8910	Statement of Issues on Appeal and Designation of Items to be Included in the Record filed by Gaytri D. Kachroo on behalf of Diana Melton Trust, Dated 12/05/05
54.	1/5/2015	8911	Letter /Notice Of Appeal (related document(s)8680, 8857) Filed by Robert A. Rich on behalf of Nancy Zraick, Edward A. Zraick, Jr.
55.	1/5/2015	8912	Notice of Appeal (related document(s)8680, 8857) filed by Robert A. Rich on behalf of Patricia DeLuca, Karen M. Rich, Nancy Zraick, Edward A. Zraick, Jr.
56.	1/5/2015	8913	Notice of Appeal (related document(s)8857) filed by Paula J. Warmuth on behalf of Michael Most. (Attachments: # 1 Exhibit A - part one (order appealed from) # 2 Exhibit A - Part 2 # 3 Exhibit A - Part 3)
57.	1/5/2015	8916	Notice of Appeal (related document(s)8680, 8857) filed by Helen Chaitman on behalf of Marsha Peshkin. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)
58.	1/5/2015	8917	Notice of Appeal (related document(s)8857) filed by Elliot G. Sagor on behalf of Elliot G. Sagor. (Attachments: # 1 Exhibit (Order Appealed From))
59.	1/15/2015	9010	Trustee's Counter-Designation of Additional Items to be Included in the Record on Appeal and Counter-Statement of the Issues to be Presented on Appeal
60.	1/15/2015	9013	Fed. R. Bankr. P. 8006 Statement of Issues and Designation of Record on Appeal
61.	1/19/2015	9075	Appellant's Statement of Issues on Appeal and Designation of Items to be Included in the Record

Statement of Issues on Appeal

1. Whether the Bankruptcy Court erred as a matter of law in affirming the application of the Trustee's Inter-Account Method to the determination of transfers between accounts.

2. Whether the Bankruptcy Court erred as a matter of law in accepting the Trustee's Inter-Account Method to the extent it violates the safe harbor established by section 546(e) of the Bankruptcy Code.

3. Whether the Bankruptcy Court erred in accepting the Trustee's Inter-Account Method for the determination of transfers between accounts, resulting in a disparate treatment of equivalent customer claims, thereby creating an arbitrary and inequitable outcome.

4. Whether the Bankruptcy Court's error in accepting the Trustee's Inter-Account Method results in an erroneous and improper interpretation of the Securities Investor Protection Act ("SIPA"), 15 U.S.C. § 78aaa, *et seq.*

5. Whether the Bankruptcy Court, to the extent it applied the "Net Equity Decision" of the Second Circuit Court of Appeals in *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff Inv. Sec. LLC)*, 654 F.3d 229 (2d Cir. 2011), erred in misinterpreting that decision and/or exceeding the proper scope of that decision.

Dated: New York, New York
January 20, 2015

Respectfully submitted,

/s/ Robert A. Rich

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Robert A. Rich

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